

Waiting for America

INTERNATIONAL EDUCATORS are employers of immigrants and interested in policies that allow international students to receive employment-based green cards. Educators know that unless the most ambitious students have at least a chance of being able to stay in the United States after graduation many such students will choose other countries—or stay home—to pursue their degrees. Educators also know that professors, researchers, and scientists are in demand globally. The ability to attract and retain these professionals at campuses in the United States is hampered when it can take a decade or more for them and their families to obtain green cards.

Low Quotas Mean Long Waits

One fact dominates all others in the discussion over employment-based green cards: the long wait times are due to the low annual quotas (only 140,000 green cards for the employees sponsored and their dependents) and the per-country limits. Foreign nationals from some countries wait longer than others. India is a good case in point. A reasonable estimate is that Indians filing in 2011 for employment-based immigrant visas will wait 12 years or more to gain permanent residence (a green card). In fact, the wait times could be far longer.

Given past historical usage of H-1Bs and other temporary visas by Indians, I estimate there are 500,000 or more Indian professionals waiting in the backlog for an employment-based green card. The average number of Indians granted permanent residence in an employment category was only 23,816 per year between 2006 and 2008, which means the waiting time for someone filing today in the third preference from India could be 20 years or more (i.e., 500,000 divided by 23,816). However, in practice, such long potential waits would likely encourage individuals over time to abandon their applications or discourage filings in the first place.¹

In the past, scientists, engineers, and others from India have represented half of the skilled professionals that U.S. employers have sponsored for employment. If wait times of this magnitude persist, employers and foreign-born professionals say this will cause many skilled people to leave the country and seek better

long-term opportunities elsewhere. Given the pace of technological change and the relatively short window of opportunity to build careers, expecting skilled professionals to remain in holding patterns for 12 to 20 years is unrealistic.

Skilled individuals born in India whose U.S. employers file for them in 2011 are unlikely to receive employment-based green cards before the year 2023 or, in some cases, potentially even 2030. To put this in perspective, children today in kindergarten may graduate from college by the time Indians who file new applications for an employment-based immigrant visa would receive a green card. The analysis here relies on government data, independent analysis, and consultation with government officials. The estimates were formulated by examining recent use of H-1B visas, analyzing cut-off dates in the State Department Visa Bulletin, and tabulating data on annual green card use by skilled immigrants.²

The key reason wait times are much longer for skilled immigrants from India than for other countries is the per-country limits, which allow only a certain number of employment-based immigrants from any one country to gain permanent residence in a year. The per-country limit affects Indians but mostly not nationals from other countries because about half of H-1B visas have gone to Indian professionals in recent years, and these H-1B visa holders are the prime candidates to be sponsored for a green card. One can estimate a wait of at least six or seven years

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for potential immigrants filing in 2011 in the third preference for all countries except India, China, Mexico, and the Philippines.

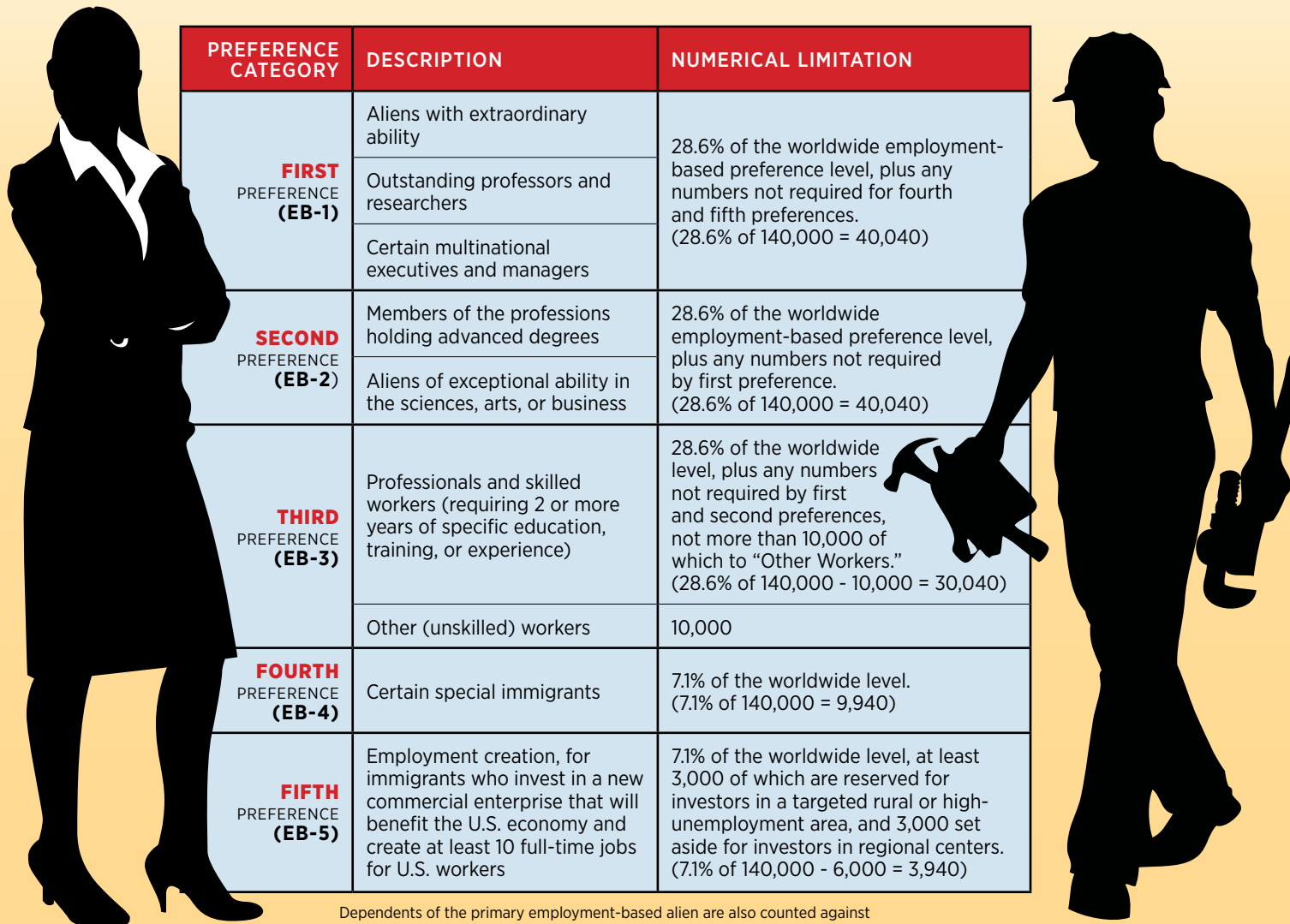
A Time-Consuming Process

The process for employer-sponsored immigrants can be time-consuming and expensive. Legal fees and other fees associated with taking a foreign national from an

initial H-1B visa through to an employment-based green card can in some cases cost an employer up to \$40,000.³ Most employer-sponsored immigrants are in the second or third preference and generally require “labor certification,” which is a finding by the Department of Labor (DOL) that there are not sufficient U.S. workers in the geographic area of employment who are able, willing,

qualified (or equally qualified, in the case of college and university teachers), and available to do the job in question, and that the employment of the prospective immigrant will not adversely affect the wages and working conditions of similarly employed U.S. workers. The process involves conducting a recruitment effort through advertising, job postings, and other government-approved

The INA currently limits the total number of employment-based (EB) immigrants to 140,000 plus the number of family-based immigrant slots not used (normally they are all used, though), per fiscal year. These 140,000 slots are divided between five employment-based “preference” categories, as follows [INA § 201(d) and § 203(b)]:



PREFERENCE CATEGORY	DESCRIPTION	NUMERICAL LIMITATION
FIRST PREFERENCE (EB-1)	Aliens with extraordinary ability	28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences. (28.6% of 140,000 = 40,040)
	Outstanding professors and researchers	
	Certain multinational executives and managers	
SECOND PREFERENCE (EB-2)	Members of the professions holding advanced degrees	28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference. (28.6% of 140,000 = 40,040)
	Aliens of exceptional ability in the sciences, arts, or business	
THIRD PREFERENCE (EB-3)	Professionals and skilled workers (requiring 2 or more years of specific education, training, or experience)	28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to “Other Workers.” (28.6% of 140,000 - 10,000 = 30,040)
	Other (unskilled) workers	
FOURTH PREFERENCE (EB-4)	Certain special immigrants	7.1% of the worldwide level. (7.1% of 140,000 = 9,940)
FIFTH PREFERENCE (EB-5)	Employment creation, for immigrants who invest in a new commercial enterprise that will benefit the U.S. economy and create at least 10 full-time jobs for U.S. workers	7.1% of the worldwide level, at least 3,000 of which are reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers. (7.1% of 140,000 - 6,000 = 3,940)

Dependents of the primary employment-based alien are also counted against the same supply of employment-based slots [INA § 203(d)].

Source: NAFSA’s *Adviser’s Manual*

recruitment mechanisms. More people immigrate in the third preference category than in the first or second preference of the employment-based immigration system.⁴

The law permits individuals to remain lawfully in H-1B status beyond six years if, for example, a valid petition is pending for an employment-based green card (although there are restrictions on this). Although permitted to wait in the United States, the immigration process places such individuals in a precarious situation. If a foreign national's employer experiences layoffs or goes out of business, the individual may have to start the green card process over again. If he or she cannot find another employer in a timely manner, the foreign national would be unable to remain legally in the United States. A pending green card application also may mean an individual cannot be promoted since it could invalidate prior filings with the federal government. Moreover, people with pending green card applications are likely to be hesitant to change employ-

ers or to become entrepreneurs. Often their spouses cannot work.

Without action by Congress to raise or exempt individuals from these quotas, the United States is likely to continue losing talented individuals unable or unwilling to endure such extraordinarily long waits to become lawful permanent residents. Congress has not raised the statutory level for employment-based green card quotas in the last twenty years. Although legislative support has existed for providing more green cards for skilled immigrants, any attempt to liberalize employment-based green card quotas has been tied to efforts to pass comprehensive immigration reform legislation, efforts that failed in 2006 and 2007 and since then have not been seriously attempted.

Looking Ahead

There are at least four actions Congress can take that will significantly reduce wait times and provide substantial relief to employers and skilled immigrants.

First, Congress can exempt from the green card quotas those immigrants with a master's degree or higher from a U.S. university in a science, technology, engineering, or math field. This provision has been included in past legislation by Representative Zoe Lofgren (D-Calif.). Congress could expand this measure to go beyond only degrees in those fields or to include individuals who received a PhD in a technical field from abroad.

Second, the new law could count only the principal employment-based immigrants, not their dependents, against the 140,000 annual employment-based quota. One reason for the large green card backlogs is that annual H-1B temporary visa quotas count only the principal recipient of an H-1B visa, whereas about half of the 140,000 quota for employment-based immigrant visas is utilized by the dependents (spouse and/or children) of the sponsored immigrant. In addition, Congress could raise the 140,000 annual quota to a much higher level.

Third, lawmakers could provide additional green card relief by including numbers previously allocated by Congress that were not utilized in prior years, such as those not used because of agency processing delays.

Fourth, Congress could eliminate the per-country limit on employment-based immigrants. This policy recommendation was included in a past bill by Representative Lofgren and Representative Bob Goodlatte (R-Va.). Failing to eliminate the per-country limit could result in skilled immigrants from India continuing to endure long waits even if other legislative changes are made.

In practice, the per-country limit under current law takes the employment-based immigration system away from a "first come, first serve" approach, to one that favors people from less populated countries (since countries with small populations will not reach the per country limits). Does the United States have an interest in favoring immigrants from countries with smaller populations? There is no reason to think we do. Under the current system, an employer could file for labor certification for three engineers on the same day—one from Denmark, one from Panama, and the other from India. Because the per-country limit would

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restrict the number of skilled immigrants from India in a year, the engineers born in Denmark and Panama would receive their green cards potentially years before the engineer from India. This would be unfair and serve no policy purpose.⁵

Liberalizing rules for green cards is less controversial than other proposed immigration reforms. For example, the Semiconductor Industry Association and the Institute of Electrical and Electronics Engineers-USA (IEEE-USA) have both asked Congress to exempt “foreign professionals with advanced degrees in STEM (science, technology, engineering, and math) fields from U.S. universities” from the annual employment-based green card quota and to streamline the path from international student to permanent resident.⁶

In the end, the issue of employment-based green cards is about the type of country we want the United States to be. Do we want to welcome talented people to our shores and give them the opportunity to stay and build new lives that also benefit our nation? Or do we want to close ourselves off and hope we can go it alone in an increasingly global economy where knowledge and access to talent are paramount? The best approach is to continue efforts to improve education in the United States, while at the same time welcome those from abroad who want to study and, in some cases, join us as fellow Americans.

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ENDNOTES

¹ For more details on the analysis see *Employment-Based Green Card Projections Point to Decade-Long Waits*, NFAP Policy Brief, National Foundation for American Policy, November 2009.

² Ibid.

³ Information provided by American Council on International Personnel.

⁴ Cases can fall into the third preference even if the sponsored immigrant has an advanced degree.

⁵ If the skilled immigrant backlogs were eliminated entirely, then the country distribution of green cards for employment-based immigration would likely be similar to H-1B temporary visas, which have no per-country limit.

⁶ http://www.sia-online.org/galleries/default-file/SIA-IEEE-USA_Letters.pdf.

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